

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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)  
DZ Reserve and Cain Maxwell ) File No.  
(d/b/a Max Martialis), ) 3:18-cv-4978-JD  
individually and on behalf of )  
others similarly situated, )  
) San Francisco,  
Plaintiffs, ) California  
) May 26, 2022  
vs. ) 22:59 p.m.  
)  
Meta Platforms, Inc., (f/k/a) )  
Facebook, Inc., )  
Defendant.  
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BEFORE THE HONORABLE JAMES DONATO  
UNITED STATES DISTRICT COURT JUDGE  
**(STATUS CONFERENCE)**

Proceedings recorded by digital recording; transcript  
produced with computer.

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**P R O C E E D I N G S**

**IN OPEN COURT**

THE CLERK: Calling civil 18-4978, DZ Reserve, et al., versus Meta Platforms, Inc.

MR. GRABER: Good morning, Your Honor. Geoffrey Graber on behalf of the plaintiff class.

MR. REICHMANN: Good morning, Your Honor. Charles Reichmann on behalf of plaintiffs.

MR. LEOPOLD: Good morning, Your Honor. Ted Leopold on behalf of plaintiffs. Nice to be here with you.

MR. KAFKA: Eric Kafka, on behalf of the plaintiffs as well.

MS. DEELEY: Good morning, Your Honor. Liz Deely on behalf of Meta.

THE COURT: Meta. Okay.

MR. CLUBOK: Good morning, Your Honor. Andrew Clubok also on behalf of Meta.

MS. BLUMSCHI: Good morning, Your Honor. Melanie Blunschi also on behalf of Meta.

MR. ACOTT: Good morning, Your Honor. Francis Acott on behalf of Meta.

THE COURT: Okay. Well, I have to be candid, I can't remember why we're here.

Did I ask for this or?

MR. GRABER: You did, Your Honor.

1 THE COURT: Okay.

2 MR. GRABER: It was to discuss a trial date.

3 THE COURT: What were we thinking for the --  
4 usually I do this because --

5 (Court reporter interrupted.)

6 MR. GRABER: I'm sorry, Geoffrey Graber on behalf  
7 of plaintiffs.

8 Your Honor, in the Court's classification order  
9 this Court set a status conference to discuss a trial date.

10 THE COURT: Oh, that's right. Okay. Is that  
11 because we need to set dates?

12 MR. GRABER: Your Honor, there actually was a date  
13 set for October 3rd and --

14 THE COURT: October 3rd.

15 MR. GRABER: And the parties are in agreement that  
16 that date should hold.

17 THE COURT: Okay. All right. What about these  
18 *Daubert* -- I saw there's some issue about *Dauberts*?

19 MR. GRABER: Well, Your Honor, Facebook refiled  
20 the *Dauberts* that the Court had ruled on previously.

21 THE COURT: Oh.

22 MR. GRABER: And we've tried to reach agreement to  
23 have those withdrawn, unfortunately we haven't been able to  
24 reach agreement.

25 THE COURT: Are they the same *Dauberts* or?

1 MS. BLUMSCHI: Your Honor, Melanie Blumschi on  
2 behalf of Meta.

3 They're not quite the same *Dauberts*. So Facebook  
4 originally filed *Dauberts* in connection with the class  
5 certification briefing and unfortunately the Court didn't  
6 have an opportunity to rule on those before *Dauberts* --

7 THE COURT: Okay. So these are for trial now, is  
8 that the --

9 MS. BLUMSCHI: Yes, so --

10 THE COURT: All right.

11 MS. BLUMSCHI: And these take into consideration  
12 the impact of the class certification order and rulings on  
13 the prior *Dauberts* for trial.

14 THE COURT: Oh, good. So you basically updated  
15 them?

16 MS. BLUMSCHI: Exactly.

17 THE COURT: That's --

18 MR. GRABER: Your Honor, respectfully --

19 THE COURT: That doesn't seem like a problem; does  
20 it?

21 MR. GRABER: Well, they are essentially identical  
22 except for one important respect, in the reply brief  
23 Facebook added in entirely new arguments essentially arguing  
24 the motion in limine that the Court directed Facebook to  
25 file before trial. We had no opportunity to respond to

1       that. Other than to bring new argument that they raised for  
2       the first time in their reply brief, they are essentially  
3       identical.

4               THE COURT: Well, you want a sur-reply, is that  
5       what you're saying?

6               MR. GRABER: Well, Your Honor, if -- we think the  
7       Court should disregard the new arguments, but if the Court  
8       wants to entertain those, we'd be -- yes, we would want an  
9       opportunity to respond.

10              MS. BLUMSCHI: Your Honor, we don't believe that  
11       there are any truly new arguments in the reply other than to  
12       take into consideration the Court's guidance in the class  
13       certification order and the *Dauberts*.

14              THE COURT: Well, I guess, you know, I set one  
15       date for -- typically I just set one day for, you know,  
16       Rule 702 motions. So if I already ruled on these, well, why  
17       am I looking at it again?

18              MS. BLUMSCHI: Your Honor, so with respect to the  
19       McFarlane *Daubert* --

20              THE COURT: Did I actually -- I'm sorry to ask,  
21       but did I actually rule on these?

22              MR. REICHMANN: Yes.

23              THE COURT: I did.

24              MS. BLUMSCHI: Yes.

25              THE COURT: I didn't just divert them?

1 MS. BLUMSCHI: Okay. Yes. There were two  
2 different dates, yeah, so, there was a deadline you  
3 mentioned on the class certification.

4 THE COURT: I had two different sets.

5 MS. BLUMSCHI: Yes.

6 THE COURT: I see. Okay. All right. Well, you  
7 filed a whole new set, right?

8 MS. BLUMSCHI: They --

9 THE COURT: I don't have to look at the old ones,  
10 you filed a whole new self-standing -- freestanding  
11 documents.

12 MS. BLUMSCHI: Yes.

13 THE COURT: Okay. And you filed an opposition,  
14 plaintiffs?

15 MR. GRABER: We did file an opposition. We  
16 pointed out they were duplicative. Of course we didn't  
17 respond to the arguments that they raised for the first time  
18 later in their reply brief.

19 THE COURT: Okay. So the issue is new things in  
20 the reply brief?

21 MR. GRABER: There are new things in the reply  
22 brief and we believe that other than the arguments that were  
23 raised the first time on reply they are essentially  
24 identical to what they filed.

25 THE COURT: Just at a high level, what are the new

1 arguments in the reply brief?

2 MR. GRABER: Your Honor, the -- when the Court  
3 ruled on the *Daubert* against Mr. McFarlane, the Court  
4 directed Facebook to -- with respect to a different --

5 THE COURT: I have to be honest. I have over  
6 500 -- who's Mr. -- I don't remember anything about this.  
7 This is your case. I know you're a mile deep in it, we  
8 judges are not, so I have no idea what I did. I can't  
9 remember that I actually did this. But just tell me,  
10 thematically so that when I read the reply I can be on the  
11 lookout from your perspective, what is it that's new?  
12 What's the new argument? Just at a high level.

13 MR. GRABER: At a high level in one of the two  
14 *Daubert* motions with respect to Mr. McFarlane they  
15 separately move to limit Dr. Roughgarden who's a separate  
16 expert -- our auction expert.

17 THE COURT: And it wasn't raised at all in the  
18 opening brief?

19 MR. GRABER: It was raised the same way it was  
20 raised in the original brief that they filed many, many  
21 months ago. And when Your Honor ruled on that same motion  
22 in connection with class certification the Court -- the  
23 Court granted the motion with respect to McFarlane and then  
24 deferred ruling on Dr. Roughgarden until the motion in  
25 limine stage because Dr. Roughgarden relies on a document



1 that was produced by Facebook.

2 THE COURT: I'm starting to remember. Now,  
3 McFarlane was this kind of a business guy --

4 MR. GRABER: Correct.

5 THE COURT: And the other -- Roughgarden?

6 MR. GRABER: Roughgarden is the auctioneer --

7 THE COURT: Partially relied McFarlane.

8 MR. GRABER: He did not rely on McFarlane. That  
9 wasn't -- he did not rely on McFarlane he relied on a  
10 document from Facebook and the Court directed Facebook to  
11 file a motion in limine with respect to that document.

12 THE COURT: Oh, okay.

13 MR. GRABER: And they put that motion in limine  
14 into the reply brief.

15 THE COURT: All right. Okay. So that's -- any  
16 other things that you think were new in the reply brief?

17 MR. GRABER: Other than that, it's essentially  
18 identical.

19 THE COURT: Okay. So that's just mainly it? So I  
20 don't think I need anything more on that; do I? I don't  
21 like sur-replies and I'm just trying to figure out with  
22 you --

23 MR. GRABER: Your Honor, if the Court wishes to  
24 entertain that argument, we believe it should just be  
25 disregarded and they should file the motion in limine as the

1 Court directed. We can address it then.

2 But if the Court is going to entertain those  
3 arguments about Dr. Roughgarden then we would ask for an  
4 opportunity to respond.

5 THE COURT: Okay. But that's it -- that's it for  
6 the new --

7 MR. GRABER: Yes.

8 THE COURT: -- things? All right.

9 MS. BLUMSCHI: If I may.

10 THE COURT: Well, I just have to read it, that's  
11 all.

12 MS. BLUMSCHI: Yeah.

13 THE COURT: Yes. Anything you wanted to add?

14 MS. BLUMSCHI: Yes. Obviously there is a hearing  
15 set for this on July 23rd -- or June 23rd and we're happy to  
16 address it in greater detail there, but we'd just submit  
17 that the arguments regarding Dr. Roughgarden are not new.  
18 They're clearly set forth in the motion that he does not  
19 have any basis for his opinion other than Mr. McFarlane's  
20 opinion.

21 Plaintiffs set forth for the first time in their  
22 opposition that Dr. Roughgarden purportedly relied on a  
23 document that he did not cite and testified in his  
24 deposition that he never saw before.

25 So in the reply, we respond to Plaintiffs'

1 argument in the opposition. It is not new. It is simply a  
2 more detailed explication of why Dr. Roughgarden's opinion,  
3 which is challenged in the motion, should be excluded.

4 THE COURT: What happened with Judge Hixson?

5 MR. GRABER: Your Honor, we had a conference with  
6 Magistrate Judge Hixson on Monday, I think it was.

7 MS. BLUMSCHI: Yes. It was on Monday.

8 MR. GRABER: Yes. And we set a settlement  
9 conference for July 12th.

10 THE COURT: July 12?

11 MR. GRABER: Yes.

12 THE COURT: Okay. And you have everything you  
13 need for that? I assume you do at this point.

14 MR. GRABER: Yes, we do.

15 And as we stated in the joint settlement  
16 conference -- sorry, joint status conference statement, the  
17 parties have held private mediation, as well.

18 THE COURT: Oh, you have?

19 MR. GRABER: Yes. They've not been successful to  
20 date but --

21 THE COURT: So now you're going to start in  
22 with -- you're going to supplement that with Judge Hixson;  
23 is that right?

24 MR. GRABER: Yes, Your Honor.

25 THE COURT: That will be good. All right.

1 MS. BLUMSCHI: That's right.

2 THE COURT: Okay. Well, anything else today for  
3 plaintiffs.

4 MS. BLUMSCHI: I think we had one issue on the --  
5 on the trial schedule, which is --

6 THE COURT: Oh, yes. September 22nd and then  
7 October 3rd.

8 MS. BLUMSCHI: October 3rd. And that is that  
9 October 5th is Yom Kippur and we would want to jointly  
10 request that the Court would be dark on Yom Kippur.

11 THE COURT: The whole day? How many lawyers are  
12 affected by that?

13 MS. BLUMSCHI: Several in our team and our class  
14 representative -- I'm sorry, the client representative.

15 THE COURT: Okay.

16 MS. BLUMSCHI: And that would also --

17 THE COURT: Let's just take it up at the pretrial  
18 conference. I think that's probably the better way to do  
19 it.

20 Okay. All right. Anything else by the  
21 plaintiffs?

22 MR. GRABER: So just to be clear, is the Court --  
23 should we go forward with the October 3rd trial date?

24 THE COURT: Oh, I'm not moving anything.

25 MR. GRABER: Great.

1 THE COURT: Okay. Anything else?

2 MR. GRABER: No.

3 THE COURT: Nothing? Okay. Thank you.

4 MR. GRABER: Thank you.

5 MS. BLUNSCHI: Thank you, Your Honor.

6 THE COURT: Okay. All right. We'll talk.

7 (Court adjourned at 1:09 p.m.)

8 \* \* \*

9 REPORTER'S CERTIFICATE

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11

12 I certify the foregoing pages of typewritten  
13 material constitute a full, true and correct transcript of  
14 my original stenograph notes, as they purport to contain, of  
the proceedings reported by me at the time and place  
hereinbefore mentioned.

14

15

/s/Lynne M. Krenz

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Lynne M. Krenz, RMR, CRR, CRC

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